



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Time Extension for Pixley Park Agreements with G-REM, Inc.

MEETING DATE: November 21, 2007

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution approving the attached Supplemental Agreement to the Pixley Park Property Exchange Agreement providing for a time extension for the Pixley Park Land Exchange Agreement and the Improvement Agreement for the Public Improvements of Pixley Park Site Grading and authorizing the City Manager and City Clerk to execute the agreement on behalf of the City.

BACKGROUND INFORMATION: The City and the developer, G-REM, Inc., entered into a land exchange agreement in December 2004 (Resolution No. 2004-248) per City Council's direction. As shown on Exhibits A and B, the land exchange agreement adjusts the property lines to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan.

As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The developer also agreed to provide design services for the future storm drain pump station and park landscaping and irrigation system with the associated cost to be reimbursed by the City. The land exchange agreement gave the developer until December 2007 to complete the obligations of the agreement.

The developer has entered into a separate improvement agreement with the City to cover the storm drainage facility improvements and grading of the basin. The work was to be completed by October 31, 2007. The developer's contractor has completed the majority of the public improvements and excavated half of the basin. But, for various reasons, the grading of the basin will not be completed by the agreed date. Not unlike City basin excavation projects, the developer's contractor anticipated being able to sell dirt to be used as fill on other projects. These projects have not materialized as expected, but it is reasonable to expect they will occur during the requested extension.

The developer is requesting to extend the completion date of the improvement agreement and the original land exchange agreement to allow extra time to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange.

APPROVED: _____
Blair King, City Manager

In the proposed supplemental agreement, the developer agrees to, at the developer's expense, design and install slope protection on the east, north, and west slopes of the excavated basin. The City agrees to remove the developer's responsibility to provide design services for the future storm drain pump station and park landscaping and irrigation system, which was to be reimbursed by the City as stated in the original land exchange agreement. The City also agrees to extend the completion date of improvement acceptance and land exchange to December 31, 2009.

The developer has executed the supplemental agreement and paid the document preparation fees.

FISCAL IMPACT: There will be no direct fiscal impact on the extension of the basin excavation and land exchange completion date. However, the value to the City of the additional slope protection work is approximately \$300,000. Since development of the basin/park is a number of years in the future, the slope protection work will reduce potential maintenance costs.

FUNDING AVAILABLE: Not applicable.

Richard C. Prima, Jr.
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer

RCP/LC/pmf

Attachments

cc: City Attorney
G-REM, Inc.
Park Superintendent
Streets and Drainage Manager

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

SUPPLEMENTAL AGREEMENT
to the
PIXLEY PARK
PROPERTY EXCHANGE AGREEMENT
AND
IMPROVEMENT AGREEMENT

This SUPPLEMENTAL AGREEMENT to the PIXLEY PARK PROPERTY EXCHANGE AGREEMENT and the IMPROVEMENT AGREEMENT FOR THE PUBLIC IMPROVEMENTS OF PIXLEY PARK SITE GRADING (hereinafter "SUPPLEMENTAL AGREEMENT") is made and entered into by and between the CITY OF LODI, a municipal corporation, hereinafter "City" and GFLIP III, L. P., a California Limited Partnership, hereinafter "Developer".

RECITALS:

WHEREAS, the parties entered into the Pixley Park Property Exchange Agreement dated November 29, 2004 (hereinafter "EXCHANGE AGREEMENT"), to address the responsibilities of City and of Developer for the Pixley Park property exchange; and

WHEREAS, the parties have entered into the Addendum to the Pixley Park Property Exchange Agreement dated March 29, 2006, to address the grading of the Pixley Park site; and

WHEREAS, the parties have entered into an Improvement Agreement for the Public Improvements of Pixley Park Site Grading (hereinafter "IMPROVEMENT AGREEMENT"), to address public improvements and grading of the Pixley park site; and

WHEREAS, the Developer is responsible for excavating and grading the future Pixley Park site in conformance with the approved Conceptual Pixley Park Master Plan; and

WHEREAS, the Developer is responsible for installing street frontage improvements along the Pixley Park site; and

WHEREAS, the City is responsible for reimbursing Developer for the design of the future storm drainage pump station at Vine Street and Cluff Avenue; and

WHEREAS, the City is responsible for reimbursing Developer for the design of the Pixley Park site irrigation, turfing, and project construction cost estimate; and

WHEREAS, all the conditions of the EXCHANGE AGREEMENT and the IMPROVEMENT AGREEMENT are to be completed by December 1, 2007; and

WHEREAS, the Developer desires to extend the terms of the EXCHANGE AGREEMENT and IMPROVEMENT AGREEMENT to allow additional time for the basin excavation at the Pixley Park site.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed by and between the parties as follows:

1. That this document supplements the Pixley Park Property Exchange Agreement, Addendum to the Pixley Park Property Exchange Agreement, and the Improvement Agreement for the Public Improvements of Pixley Park Site Grading previously executed by the parties.
2. The parties agree to extend the completion date of the required improvements and property exchange as set forth in the various agreements entered into by the parties and described in paragraph 1 above, to and including December 31, 2009.
3. City agrees to the deletion of Item Number 12 from the EXCHANGE AGREEMENT regarding the design service for the storm drainage pump station and the park site landscape and irrigation.
4. Developer agrees to design and install slope protection on the easterly, northerly and westerly slopes of the graded basin at the Pixley Park site to the City's specifications and approval. The slope protection shall consist of approved vegetation and irrigation elements. Developer agrees to pay all of the required plan check fees, design cost and installation cost. Developer further agrees to maintain the vegetation and irrigation elements (includes weed and debris removal, replacement of dead and dying vegetation, and adjustment and replacement of irrigation facilities) at the Developer's expense for a period of two (2) years after the acceptance of the improvements by City.
5. The parties agree that the following paragraph shall replace Paragraph 15 of the IMPROVEMENT AGREEMENT regarding Repair or Reconstruction of Defective Work:

Repair or Reconstruction of Defective Work

If, within a period of 2 year after final acceptance by City of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this agreement, including the mitigation measures for dust and erosion control, fails to fulfill any of the requirements of this agreement plans and specifications referred to herein, Developer and Developer's surety shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Developer shall pay to City the actual cost of such repairs plus 15% for administration and overhead costs.

6. Developer agrees to provide warranty security as follow:

At least two weeks prior to the hearing on City's acceptance of the project improvements, Developer shall furnish Warranty Security of at least 10% of the total cost of the actual project cost in favor of City. The warranty period for the entire project shall be two (2) years following the date of final acceptance of the improvements by City Council..

7. Developer shall provide and keep current the necessary securities and insurance as specified in the IMPROVEMENT AGREEMENT and EXCHANGE AGREEMENT.
8. All other terms and conditions of the IMPROVEMENT AGREEMENT and EXCHANGE AGREEMENT shall remain unchanged.
9. Developer agrees to pay all additional costs for preparation and execution of this SUPPLEMENTAL AGREEMENT.
10. This SUPPLEMENTAL AGREEMENT shall run with the land and be binding on the Owner, its heirs, successors or assigns.
11. A copy of this SUPPLEMENTAL AGREEMENT shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California 95201-1968.
12. Any notice required to be given by the terms of this SUPPLEMENTAL AGREEMENT shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

Notices required to be given to City shall be addressed as follows:

Richard C. Prima, Jr.
Public Works Director
City of Lodi
P. O. Box 3006
Lodi, CA 95240-1910

Notices required to be given to Owner shall be addressed as follows:

GFLIP III L. P., A California Limited Partnership

IN WITNESS WHEREOF, the parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a municipal corporation

Dated: _____ 2007

By: _____
Blair King, City Manager

Attest: _____
Randi Johl, City Clerk

GFLIP III, L. P., A California Limited Partnership

Dated: _____ 2007

(CORPORATE SEAL)

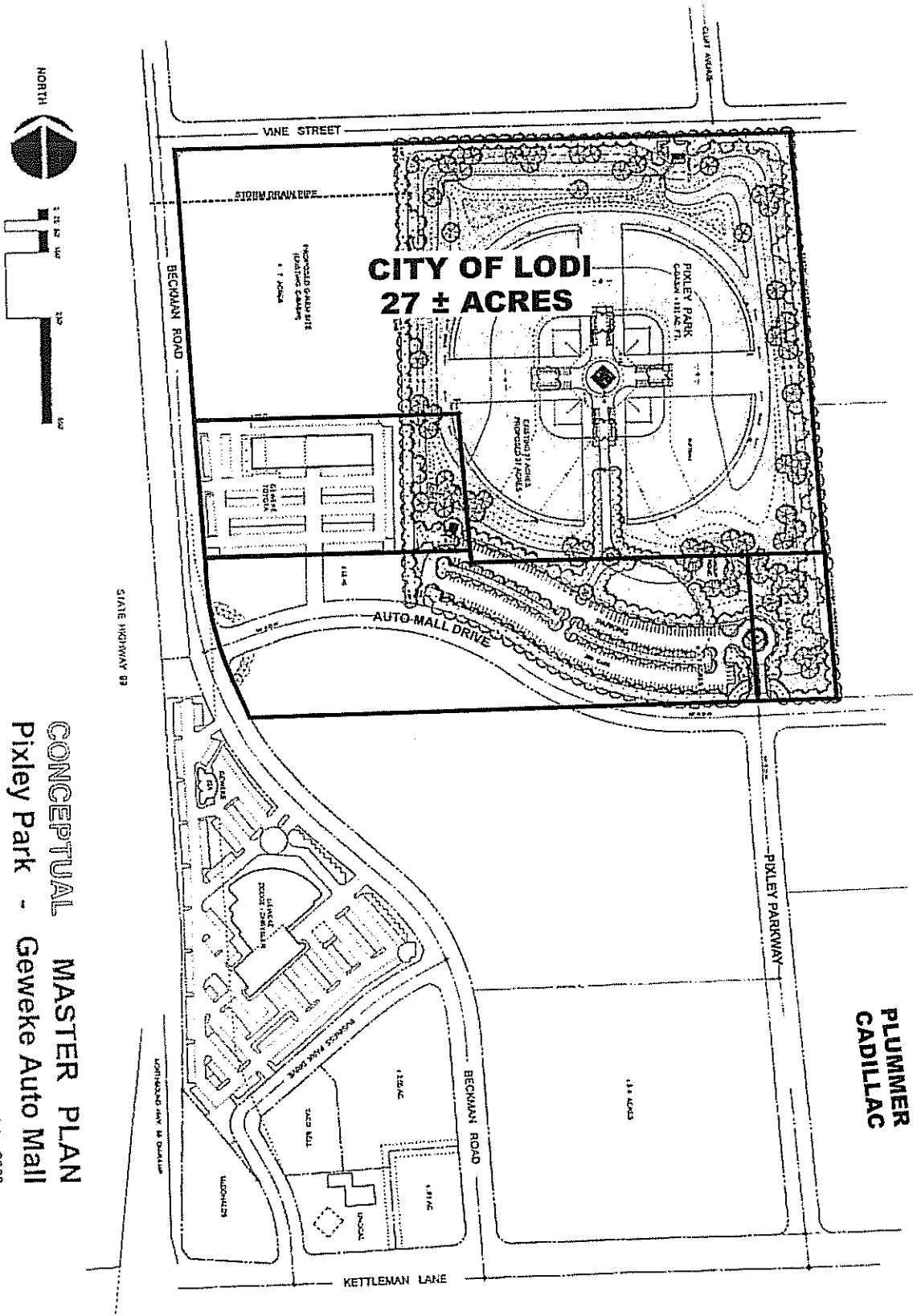
Approved as to form: _____
JANICE D. MAGDICH
Deputy City Attorney

Dated: _____ 2007



EXHIBIT A

EXISTING LOT LINES



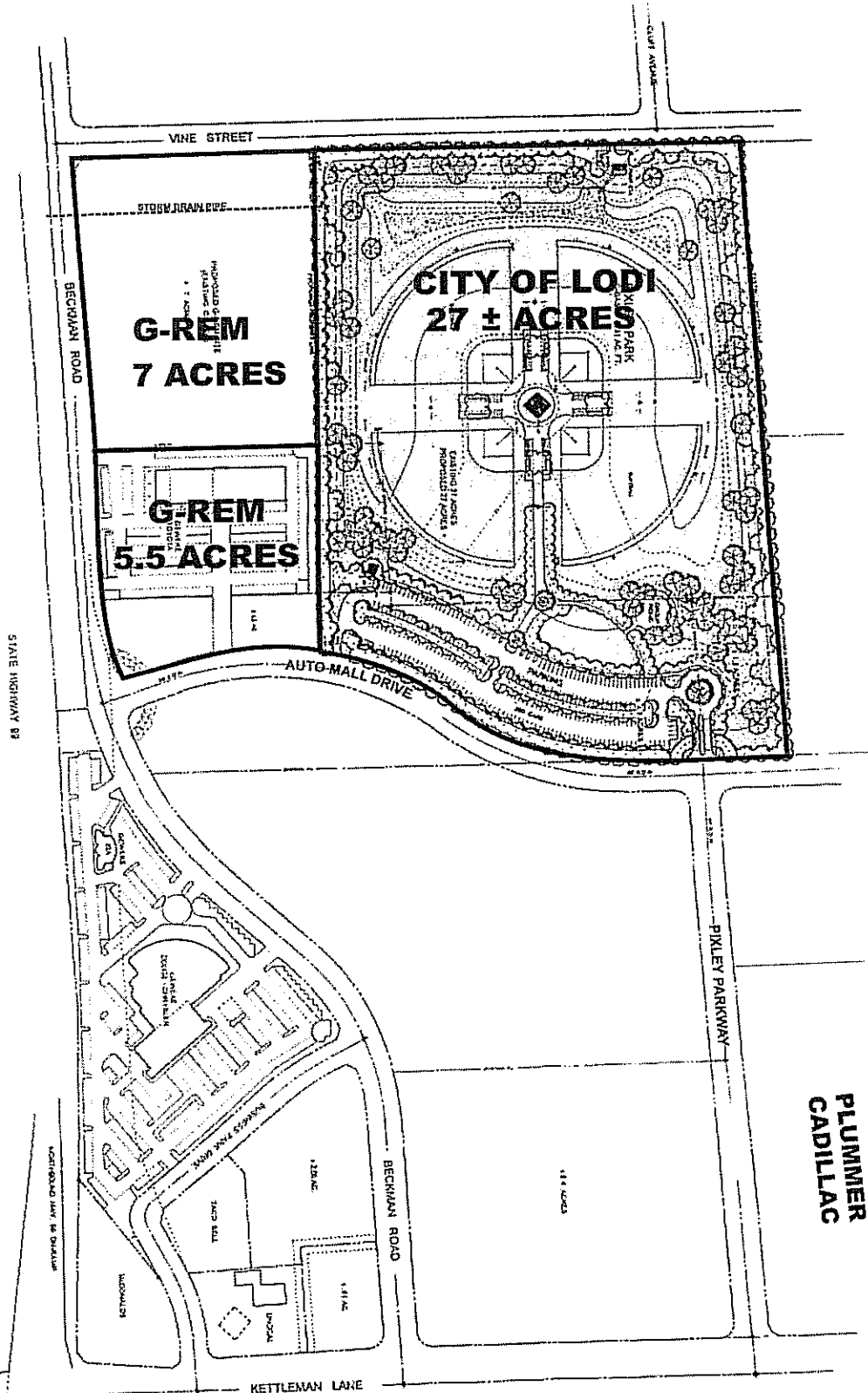


CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT B

PROPOSED PROPERTY LINES



CONCEPTUAL MASTER PLAN
Pixley Park - Geweke Auto Mall
G-REM, INC.
City of Lodi, California
Lawrence A. Neithorn, ASLA, Landscape Architect
July 2003

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING SUPPLEMENTAL AGREEMENT TO
THE PIXLEY PARK PROPERTY EXCHANGE
AGREEMENT

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WHEREAS, the City of Lodi and the developer, G-REM, Inc., entered into a land exchange agreement in December 2004 to reconfigure the existing lot lines of Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan. As part of the land exchange agreement, the developer agreed to construct all required frontage improvements fronting the proposed park site, excavate the basin to conform to the final grading of the future park layout and to provide design services for the future storm drain pump station; and

WHEREAS, the developer has entered into an improvement agreement and an addendum to the improvement agreement to cover the storm drainage facility improvements and grading of the basin, with the work to have been completed by October 31, 2007; and

WHEREAS, the developer is requesting to extend the completion date of the improvement agreement and the original land exchange agreement to allow extra time to complete all the required improvements and grading of the park site; and

WHEREAS, in the supplemental agreement, the developer agrees to, at the developer's expense, design and install slope protection on the east, north, and west slopes of the excavated basin. The City agrees to remove the developer's responsibility to provide design services for the future storm drain pump station and park landscaping and irrigation system, which is to be reimbursed by the City as stated in the original land exchange agreement. The City also agrees to extend the completion date of improvement acceptance and land exchange to December 31, 2009; and

WHEREAS, the developer has executed the supplemental agreement and paid the document preparation fees, and staff recommends that the City Council approve the supplemental agreement providing a time extension for the Pixley Park Land Exchange Agreement and the Improvement Agreement for the Public Improvements of Pixley Park Site Grading.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Supplemental Agreement to the Pixley Park Property Exchange Agreement; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager and City Clerk to execute the agreement on behalf of the City.

Dated: November 21, 2007

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I hereby certify that Resolution No. 2007-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 21, 2007, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2007-_____